

FEDERAL COMMUNICATIONS COMMISSION CREDIT & DEBIT MANAGEMENT
Washington, D. C. 20554
DEC 18 2000
GRUBER, OMD

OFFICE OF
MANAGING DIRECTOR

Gerard J. Duffy, Esquire
Blooston, Mordkofsky, Jackson & Dickens
2120 L Street, N.W., Suite 300
Washington, DC 20037

RE: Lost Nation-Elwood Telephone Company
Request for Waiver of Study Area Application Fee
Fee Control No. 9708018140155001

Dear Mr. Duffy:

This is in response to your request for waiver of the fee that Lost Nation-Elwood Telephone Company (LNET) filed in connection with its petition for study area waiver under Part 36 of the Commission's rules. LNET petitioned to expand its study area to include the Oxford Junction, Iowa, area.

You contend that LNET is entitled to a refund of its \$5,960 filing fee. You maintain that, because you were forced by circumstances beyond LNET's control to withdraw its petition for study area waiver before the Common Carrier Bureau issued a public notice seeking comment on the petition, the Bureau performed little, if any, of the processing that the filing fee is intended to cover. Moreover, you argue that lack of a refund would deprive LNET of significant funds during the critical start-up stage of its Oxford Junction project and could delay its "break-even point" by several months.

We have fully considered all of your contentions. The fee requirement for waiver of the accounting rules was established by the Schedule of Fees contained in the Omnibus Budget Act of 1989, Pub. L. No. 101-239, 103 Stat. 2106. *See Conference Report To Accompany H.R. No. 386*, 101st Cong., 1st Sess. 20-28 (1989); reprinted in the *Congressional Record* of Nov. 21, 1989 at page H9333 (*Conference Report*). Congress determined that the fees "represent a fair approximation of how the Commission's costs should be distributed." *Conference Report* at 433. The Commission also has stated that:

there will be individual situations in which the actual cost may be more or less [than the required application fee]. It is not our intention to make individualized determinations of the 'appropriate fee.' Rather, except in unusual cases in which the public interest requires otherwise, we will levy the fee as determined by Congress.

Establishment of a Fee Collection Program To Implement the Omnibus Budget Act of 1989, 3 FCC Rcd 5987 (1988).

We deny your request for refund of LNET's filing fee. The Commission's rules do not provide for refund of a filing fee upon withdrawal of the underlying petition. Further, the Commission clearly incurred processing costs associated with LNET's petition for study area waiver and, moreover, has stated that its "processing costs were but one factor that resulted in the legislated fees." *See Establishment of a Fee Collection Program To Implement the Provisions of the Consolidated Omnibus Budget Act of 1985*, 2 FCC Rcd 947, 949 (1987). In addition, the Commission has explicitly stated that a refund will not be granted once an application has cleared the fee review process, except in certain circumstances enumerated in Section 1.1113 of the Commission's rules. 47 C.F.R. § 1.1113. In the case of LNET, however, Section 1.1113 is inapplicable because LNET voluntarily withdrew its application when it was unable to supply necessary information, which it should have provided initially with its petition. *See Common Carrier Bureau Establishes Expedited Processing Procedures for Petitioners Seeking Part 36 Study Area Waivers*, Public Notice, DA 95-1344 (1995).

You also represent in general terms that the imposition of the \$5,960 filing fee is a significant expense for LNET and thus a financial hardship. Although the Commission has discretion to "waive ... payment of charges in any specific instance for good cause shown, where such action would promote the public interest," 47 U.S.C. § 158(d)(2); *see also* 47 C.F.R. § 1.1117(a), this waiver authority is construed narrowly. *See Fee Decisions of the Managing Director*, 7 FCC Rcd 4708, 4718 (1992) (GTE Letter); *Establishment of a Fee Collection Program*, 3 FCC Rcd 5987 (1988); *Fee Collection Order* at 961 (citing Conference Report at 423). The Commission recognizes that in certain instances the payment of required fees may impose financial hardship and has waived fees where "a compelling case of financial hardship" is shown. *Cf. Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346 (1994), *recon. granted*, 10 FCC Rcd 12759 (1995).

Based on your arguments, however, you have not made a showing sufficient to warrant waiver of the fee payment. To establish a compelling case of financial hardship, a more detailed showing is required. To this end, you may submit information such as a balance sheet, a profit and loss statement (audited, if available), a cash flow projection (with an explanation of how it was calculated, and with and without the receipt of anticipated USF support), a list of officers and their individual compensation, together with a list of the highest paid employees and the amount of their compensation, or similar information.

Gerard J. Duffy, Esq.

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We therefore deny LNET's request for waiver without prejudice. If you have any questions concerning this letter, please call the Credit & Debt Management Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark A. Reger", with a stylized flourish at the end.

Mark A. Reger
Chief Financial Officer

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

NOV 14 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

File No. AAD-97-88

TO: Managing Director

Lost Nation-Elwood Telephone Company (LNET), by its attorney and pursuant to Sections 1.3, 1.1113(a)(5) and 1.1117(a) of the Commission's Rules, respectfully requests waiver, and return or refund of, the five thousand six hundred sixty-five dollar (\$5,665.00) application fee paid by LNET in connection with its July 30, 1997 Petition for Study Area Waiver ("Petition"). As a result of circumstances beyond LNET's control, the Petition was required to be withdrawn by LNET prior to the Common Carrier Bureau's issuance of a public notice soliciting public comments on the Petition and otherwise initiating a formal study area waiver proceeding.

LNETH is a small company that provides local exchange telephone service to approximately 680 access lines in and around the communities of Lost Nation (1990 population: 467) and Elwood (1990 population: 100) in Clinton County, Iowa.

On July 30, 1997, LNET petitioned to expand its study area to include additional facilities (175 projected access lines) in and around the town of Oxford Junction (1990 population: 581) in neighboring Jones County, Iowa. LNET included with its Petition a copy of the Iowa Utilities Board's (IUB's) December 19, 1996 Order Conditionally Approving Application For Modification Of Certificate ("IUB Order") granting LNET the requisite state authorization to serve Oxford Junction. At the time, LNET believed that the IUB Order contained the IUB's implicit consent, or lack of objection, to the proposed study area waiver.

Subsequently, the Common Carrier Bureau ("Bureau") staff contacted LNET's counsel, and requested submission of a letter or order from the IUB expressly stating that the IUB had no objection to a federal study area waiver adding Oxford Junction to LNET's existing study area. LNET's request to the IUB for such letter or order was denied, and LNET has been forced to withdraw its Petition before the Bureau issued a public notice soliciting public comment, or otherwise initiated a formal proceeding to consider it.

**Withdrawal Occurred Prior To
Provision Of Regulatory Services**

Normally, the Bureau processes a study area waiver petition by: (1) initially reviewing the petition for completeness and compliance with Commission requirements; (2) preparing and issuing a public notice soliciting public comment on the petition, and setting deadlines for comments and reply comments;

(3) receiving and reviewing comments and reply comments; (4) requesting additional information, if needed, by telephone and/or letters from the petitioner and/or commenters; (5) in some cases, holding meetings and/or telephone conferences with the petitioner and/or interested parties; (6) drafting an order discussing and resolving issues raised by the petition and/or other pleadings and documents in the record; (7) reviewing, revising, adopting and issuing a Bureau or Commission order granting or denying (in whole or part) the requested study area waiver; and (8) in some cases, considering and resolving petitions for reconsideration or applications for review of the initial order.

In the present case, the Bureau informally assigned a file number to LNET's petition and performed some portion of an initial review. However, LNET was forced by the IUB's refusal to issue a "no objection" letter to withdraw its Petition before the Bureau issued its initial public notice or commenced the normal comment and review proceeding.

The Commission has indicated that the fees specified in Section 1.1105 are charges for the regulatory services that it provides. Here, the Bureau performed, at most, a cursory initial review and was not required to draft a public notice or to conduct any part of the normal waiver proceeding. In other words, LNET's withdrawal of its Petition relieved the Bureau of the burden of performing virtually all of the regulatory services which the \$5,665 study area application fee (Payment Type Code BEA) was designed to recover. Under these circumstances, waiver

and refund of the subject application fee are equitable and appropriate.

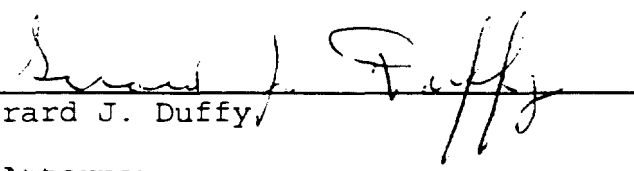
**The Requested Waiver And Refund
Will Promote The Public Interest**

LNET is a small, rural telephone company (approximately 680 access lines) which has sought to provide facilities-based local exchange service in competition with GTE Midwest Incorporated (GTE) in the neighboring small community of Oxford Junction (175 projected additional access lines). LNET believes that its proposal comprises the very type of facilities-based local exchange competition that the Telecommunications Act of 1996 was enacted to encourage.

LNET is still trying to furnish competitive local exchange services and exchange access services in Oxford Junction -- albeit without a study area waiver or Universal Service Fund support. This is a difficult, uphill battle -- and will become even more onerous if LNET is deprived of the \$5,665 application fee that it paid to the Commission in connection with its withdrawn Petition. Loss of these dollars would deprive LNET of substantial financial resources during the critical start-up stage of its competitive operation, and would postpone by as much as several months the break-even date for its Oxford Junction project. Such an outcome would penalize LNET for its attempt to offer competition in a neighboring community, and discourage other rural telephone companies contemplating similar competitive ventures.

Good cause having been shown, Lost Nation-Elwood Telephone Company respectfully requests that the Managing Director grant LNET a waiver of the subject \$5,665 application fee and return the full amount to it. In light of the extenuating circumstances of LNET's withdrawal of its Petition, of the termination of the proceeding before the Bureau was required to perform a significant portion of its normal study area waiver functions, and of the extremely small number of competitive access lines involved, return of the subject application fee is justified, equitable and in the public interest.

Respectfully submitted,
LOST NATION-ELWOOD TELEPHONE COMPANY

By 
Gerard J. Duffy

Its Attorney

Blooston, Mordkofsky, Jackson & Dickens
2120 L Street, N.W., Suite 300
Washington, D.C. 20037
(202) 659-0830

Dated: November 14, 1997

Payment Transactions Detail Report

Date: 12/5/97

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name	Account Number	Received Date
9708018140155001	LOST NATION ELWOOD TELEPHONE C 304 LONG STREET	FCC2040196	07/30/97

LOST NATION IA 52254

Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
\$5,665.00	\$5,665.00	1	BEA	1		LOST NATION ELWOOD TELEPHONE C			\$5,665.00	1	PMT
Total	1								\$5,665.00		